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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application of: ELLISON *et al.* : Initial Patent Examination Division  
Application No.: 09/173,531 : Attorney Docket No.: 7409-150  
Filed: October 15, 1998 :  
For: COMPOSITIONS AND METHODS FOR :  
THE TREATMENT OF PRIMARY AND :  
METASTATIC NEOPLASTIC DISEASES :  
USING ARSENIC COMPOUNDS :  
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**PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT OR,  
IN THE ALTERNATIVE, PETITION TO REVIVE UNAVOIDABLY  
ABANDONED APPLICATION OR, IN FURTHER ALTERNATIVE,  
PETITION TO REVIVE UNINTENTIONALLY ABANDONED APPLICATION**

Assistant Commissioner for Patents  
Washington, DC 20231

Sir:

This is in response to the improper "Notice of Abandonment Under 37 C.F.R. §1.53(f) or (g)" (PTO form 1666) mailed August 19, 1999, in connection with the above-captioned application. For the reasons set forth herein the Petition should be granted and the Notice of Abandonment withdrawn.

I. FACTS

On August 23, 1999, Attorneys for Applicants received a "Notice of Abandonment under 37 C.F.R. §1.53 (f) or (g)" dated August 19, 1999, which stated that the above-identified application was abandoned for failure to respond to a Notice to File Missing

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Parts ("Missing Parts Notice") which was allegedly mailed by the Patent and Trademark Office on November 3, 1998. However, the Attorneys for Applicants never received the Missing Parts Notice as evidenced by the Declaration of Carolyn Garcia (Exhibit A). Upon receiving the Notice of Abandonment, Attorneys for Applicants promptly and diligently investigated the fileroom and mailroom records to determine whether Pennie & Edmonds LLP had ever received the Missing Parts Notice. As attested in the Declaration of Carolyn Garcia (Exhibit A), the Missing Parts Notice dated November 3, 1998 was not and has still not been received by the Attorneys for Applicants.

## II. DISCUSSION

The Applicants submit that the abandonment resulted from non-receipt of an office communication, and thus was unavoidable and unintentional. It is submitted that the facts of this case show very clearly that the abandonment took place solely due to either failure of the U.S. Patent and Trademark Office to duly mail the Missing Parts Notice or failure of the United States mail. The Attorneys for Applicants never received the Missing Parts Notice when and if mailed. The Declaration of Carolyn Garcia (Exhibit A) explains the firm's standard procedures for docketing Patent and Trademark Office communications. Ms. Garcia states that no Missing Parts Notice dated November 3, 1998 in connection with the above-identified application was received from the Patent and Trademark Office on that date or thereafter. A response to the Missing Parts Notice was not filed because the Applicants did not know that a Notification was issued and outstanding. Indeed, a response could not have been filed under these circumstances.

III. CONCLUSION AND PRAYER FOR RELIEF

It is respectfully submitted that the abandonment resulted from non-receipt of an office communication. The Applicants hereby petition for withdrawal of the holding of abandonment and request that a new Notice To File Missing Parts be mailed for the above-identified application. M.P.E.P. §§ 711.02, 711.03(c).

In the event that this request is not granted, the Applicants hereby petition to revive the unavoidably abandoned application under 37 C.F.R. § 1.137(a); in such case, please charge the \$55.00 (small entity) petition fee (§ 1.17(1)) to the Attorneys for Applicants' Deposit Account No. 16-1150.

In the event that this request is not granted and it is held that the abandonment was avoidable, the Applicants hereby petition to revive the unintentionally abandoned application under 37 C.F.R. § 1.137(b); in such case, please charge the \$605.00 (small entity) petition fee (§ 1.17(m)) to the Attorneys for Applicants' Deposit Account No. 16-1150.

A Verified Statement Claiming Small Entity Status is submitted herewith.

If any fees are required in connection with the filing of this Petition, please charge the required fee to Pennie & Edmonds LLP Deposit Account No. 16-1150. A duplicate copy of this paper is provided.

Date September 21, 1999

Respectfully submitted,

*Brian M. Poissant*

Brian M. Poissant

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By: *[Signature]* 40,258  
28,462  
(Reg. No.)

Enclosure